

C. Purpose and Approach of the Report to the Special Division

While the OIC's investigation resulted in the collection of an enormous amount of information, we do not attempt to recount all of that information in this Final Report. We recognize that when Congress passed the Independent Counsel Reauthorization Act of 1994, it placed great emphasis on the accountability function of the reporting requirement.⁶ At the same time, Congress offered an admonition regarding the damage to reputation that can result from a final report that sets forth unflattering information not pertinent to the decision to bring or not bring charges against the target or any other individual:

With regard to an individual whose conduct was only tangential to that of the person for whom the independent counsel was appointed, an independent counsel should normally refrain from commenting on the reason for not indicting that person unless it is to affirm a lack of evidence of guilt. On the other hand, the conferees consider to be crucial a discussion of the conduct of the person for whom the independent counsel was appointed to office. This discussion should focus on the facts and evidence and avoid the use of conclusory statements in the absence of an indictment.⁷

However, Congress also acknowledged that the public interest may require an independent counsel to explain, with conclusions based upon evidence and reasonable inferences therefrom, why a specific individual was not charged:

The conferees believe that, in assessing whether an explanation should be provided with respect to a specific unindicted individual, an independent counsel should base the decision on whether it would be in the public interest for such information to be disclosed. The public interest encompasses a wide range of concerns which need be carefully balanced, including understanding the basis for

⁶"An independent counsel shall . . . before the termination of the independent counsel's office under Section 596(b), file a final report with the division of the court, setting forth fully and completely a description of the work of the independent counsel. . . ." 28 U.S.C. § 594(h)(1)(B) (1998).

⁷H.R. Conf. Rep. No. 511, 103rd Cong., 2nd Sess., 1994, 1994 U.S.C.C.A.N. 792, 45-46.